

**DOMESTIC
SECURITY:
EXEMPTIONS TO
PUBLIC RECORDS
DISCLOSURE**

REPORT 04-11

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STATE OF WASHINGTON

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AND REVIEW COMMITTEE

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Overview

In response to the events of September 11, 2001, the Legislature added records related to preventing terrorist attacks and records related to computer and telecommunication networks to the list of exemptions from public disclosure requirements. SSB 6439 (Chapter 335, Laws of 2002) also directed JLARC to review the effect of the law by September 2004 on state agency performance in responding to requests for disclosure of records.

We conclude that the law's impact has been negligible: the volume of requests and denials covered by these exemptions has been very low, resulting in little impact on agencies' workload.

Public Disclosure

The state's public disclosure law **requires** agencies to make available for public inspection and copying all public records, **unless the information is specifically exempted**.

When the Legislature added the domestic security exemptions, the following were specifically exempted from "public inspection and copying" (RCW 42.17.310 (1)(ww) & (ddd)):

- Portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to **criminal terrorist acts**;
- **Vulnerability assessments or deployment plans**, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans;
- Records not subject to public disclosure **under federal laws** that are shared by federal or international agencies;
- Information prepared from **national security briefings** provided to state or local government officials related to domestic preparedness for acts of terrorism; and
- Information regarding the **infrastructure and security of computer and telecommunication networks**.

Terrorist acts are defined as "acts that significantly disrupt the conduct of government or the general civilian population of the state or the United States and that manifest an extreme indifference to human life" (RCW 42.17.310 (1)(ww)).

Impact On State Agency Performance

In assessing the impact of the additional exemptions, JLARC was directed to select a representative sample of up to five state agencies. Based on public testimony on SSB 6439 as it was debated, we reviewed:

- Utilities and Transportation Commission (UTC)
- State Patrol
- Department of Information Systems (DIS)
- Department of Transportation (DOT)
- Military Department

In addition to these five agencies, we spoke with the Attorney General's Office to determine if any appeals on denials have been filed. None have.

To judge the impact of the exemptions, we asked agencies for information on the total number of requests for public records for calendar year 2003. In addition, regardless of their basis, we asked for the number of denials and specifically the number of denials based on the provisions added by SSB 6439 for 2003. We also asked how agencies track requests and their estimate of the exemptions' impact.

	Total Number of Requests in 2003	How Many Denied?	Of the denials, how many based on the new exemptions?	Process for Tracking Requests	Agencies' Estimate of Impact of Added Exemptions
Washington State Patrol	9,914	1,867	0	Database, maintained by each office	Negligible
Department of Transportation	904	42	0	Individual offices track with separate systems	Negligible
Department of Information Services	71	6	3	Head office responsibility, with all requests forwarded to Public Disclosure Officer	Small. While the numbers are low, the exemptions created in SSB 6439 are more complex than other exemptions.
Military Department	24	0	0	Most requests handled by Risk Management Office	Negligible. Agency noted that it has, however, added some complexity to the review process.
Utilities and Transportation Commission	<i>UTC believes it does not possess documents that are subject to exemption from disclosure under the provisions of SSB 6439. According to the UTC, companies they regulate do not typically file with the Commission the types of records described in SSB 6439.</i>				

The table shows differences in total numbers of requests for public records disclosure, but only three requests were denied in 2003 based on the new exemptions.